

Title 2. Administration
Division 2. Financial Operations
Chapter 3. Department of General Services
Subchapter 4. Office of Public School Construction
Group 1. State Allocation Board
Subgroup 5.6. Regulations Relating to the Federal School Renovation Program
(Federal School Repair and Renovation Program)

Article 1. General Provisions and Definitions

Section 1859.200. Purpose.

These regulations implement the Federal School Repair and Renovation Program, which establish a grant program to administer federal funds to Local Education Agencies authorized by Section 1(a)(1), United States Department of Education Consolidated Appropriations Act of 2001 (Public Law 106-554).

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Section 321, Public Law 106-554.

Section 1859.201. Director of General Services.

The Director of General Services, or the Director's legal designee shall perform all acts necessary to carry out the provisions of these regulations except such functions as are reserved to the Board and to other agencies by law or by Sections 1859.200 through 1859.220 inclusive. The acts to be performed include, but are not limited to, entering into contracts to administer the regulations.

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Section 321, Public Law 106-554.

Section 1859.202. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the law:

"ADA" means the federal Americans with Disabilities Act of 1990 codified in Section 12101 et seq. Title 42, United States Code.

"Administration Costs" means the costs associated with the preparation and submittal of the Federal Renovation Program application to the State and the costs necessary to assure all state application requirements have been met.

"Apportionment" means a reservation of funds by the Board for eligible Federal Renovation Program applications.

"Board" means the State Allocation Board as established by Section 15490 of the Government Code.

"CBEDS Report" means the enrollment information provided through the California Basic Education Data System by the Local Educational Agency to the California Department of Education.

"Charter School" means a school established in accordance with the provisions of Education Code Sections 47605 through 47608.

"Community School Pupil" means a pupil meeting one or more of the conditions described in Subdivision (b) of Education Code Section 48662 or any of the conditions described in Education Code Section 1981.

"Deferred Maintenance Program (DMP)" means the state deferred maintenance funding authorized by Education Code Sections 17582 through 17588.

"DMP Critical Hardship Unfunded List" means an information list of critical hardship projects authorized by Education Code Section 17587 approved by the Board.

"Federal Renovation Program (FRP)" means the Federal School Repair and Renovation Program authorized by Section 1(a)(1), United States Department of Education Consolidated Appropriations Act of 2001 (Public Law 106-554).

“High Poverty Local Educational Agency” means an LEA that has at least 30 percent of its pupils defined as Poor Children or has at least 10,000 of its pupils defined as Poor Children.

“Impacted LEA” means an LEA that meets the requirements of Section (a)(3) of the United States Department of Education Consolidated Appropriations Act of 2001 (Public Law 106-554).

“Local Educational Agency” means an entity that meets the requirements of Section 14101(18)(A) or (B) of the federal Elementary and Secondary Education Act of 1965.

“Mello-Roos Bonds” means the bonds that are authorized under the provisions of the Mello-Roos Community Facilities Act of 1982, commencing with Government Code Section 53311.

“Office of Public School Construction (OPSC)” means the State office within the Department of General Services that assists the Board as necessary and administers the FRP on behalf of the Director.

“OPSC Deferred Maintenance Program Critical Hardship Workload List” means a list of critical hardship applications authorized by Education Code Section 17587 submitted to the OPSC but not yet included on the DMP Critical Hardship Unfunded List.

“OPSC Modernization Workload List” means a list of SFP modernization projects for which the LEA has submitted all necessary application documents to the OPSC that are required to be submitted as identified in the General Information Section of Forms SAB 50-01, *Enrollment Certification/Projection*, (Revised 01/01); SAB 50-02, *Existing School Building Capacity*, (Revised 01/01); SAB 50-03, *Eligibility Determination*, (Revised 01/01); and SAB 50-04, *Application for Funding*, (Revised 03/01), under the SFP.

“Poor Children” means children five to seventeen years of age who are from families with an income below the poverty line as defined by the federal Section 673(2) of the Omnibus Budget Reconciliation Act of 1981 [42 U.S.C. 9902(2)].

“Private School” means an entity that has filed an affidavit or statement with the Superintendent of Public Instruction pursuant to Education Code Section 33190.

“Public Law 106-554” means Section 1(a)(1), United States Department of Education Consolidated Appropriations Act of 2001.

“Rehabilitation Act” means Section 504 of the Rehabilitation Act of 1973 codified in Section 794 of Title 29, United States Code.

“Rural Local Educational Agency” means a LEA in which the plurality of the pupils are in schools that are in Locale Codes of 7 and 8 as defined by the United States Department of Education’s National Center for Education Statistics.

“School Facilities Improvement District” means a legal entity authorized by Education Code Section 15300 to generate school facilities funding.

“School Facility Program (SFP)” means the Leroy F. Greene School Facilities Act of 1998.

“SFP Modernization Unfunded List” means an information list of unfunded modernization projects approved under the provisions of the SFP.

“Section” means a section in these Subgroup 5.6 regulations.

“Special Day Class Pupil” means an individual with exceptional needs as described in Education Code Section 56026 as further defined and classified in 34 Code of Federal Regulations Part 300.5.

“State Educational Agency” means the California Department of Education.

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Section 15504, Government Code. Section 321, Public Law 106-554.

Article 2. FRP Application Procedure

Section 1859.203. Local Educational Agencies.

The following Local Educational Agencies (LEA’s) that meet the requirements of Section 14101(18) (A) or (B) of the federal Elementary and Secondary Education Act of 1965 may apply for FRP grants:

- (a) Public elementary, unified and high school districts that serve any combination of kindergarten through twelfth grade pupils.
- (b) County Superintendent of Schools (CSS) that serve any combination of kindergarten through twelfth grade pupils.

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Sections 321(b)(2), 321 (c)(3), 321(i) and 321(j)(1), Public Law 106-554. Section 14101(18), Elementary and Secondary Education Act of 1965. Section 47636, Education Code.

Section 1859.204. Charter Schools.

A charter school may be eligible to receive FRP grants through a qualifying LEA identified in Section 1859.203. Charter schools seeking FRP grants shall apply for FRP grants through the LEA that approved the school's charter.

If the State Board of Education approved the school's charter, the charter school may apply for FRP grants through any of the following LEA's:

- (a) The LEA serving the same or similar grade levels where the charter school is physically located.
- (b) Any LEA that will accept the charter school's request for FRP grants.

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Sections 321(b)(2), 321 (c)(3), 321(i) and 321(j)(1), Public Law 106-554. Section 14101(18), Elementary and Secondary Education Act of 1965. Sections 47605 through 47608, Education Code.

Section 1859.205. Non-Profit Private Schools.

A non-profit private school that meets the following criteria may be eligible to receive certain FRP grants through a qualifying LEA identified in Section 1859.203:

- (a) It was organized and operates for nonprofit purposes pursuant to the Revenue and Taxation Code, Section 23701(d) and is exempt from taxes by meeting all requirements imposed by the Revenue and Taxation Code, Section 23701.
- (b) It has at least 40 percent of its enrolled pupils defined as "Poor Children".

Qualifying non-profit private schools seeking FRP grants shall apply for FRP grants through the LEA serving the same or similar grade levels where the non-profit private school is physically located.

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Sections 321(l), Public Law 106-554. Sections 33190 through 33193, Education Code. Sections 23701 and 23701(d), Revenue and Taxation Code.

Section 1859.206. Application for FRP Funding.

An eligible LEA seeking funding for a FRP grant shall complete and file with the OPSC, the *Application for Federal Grant*, Form SAB 60-01(New 01/02), which is incorporated by reference.

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Section 321, Public Law 106-554.

Section 1859.207. Application Submittals.

The Board shall accept applications until April 15, 2002 for the initial FRP appropriation. If all available funds are not apportioned to the eligible applications submitted by the date noted above, or there are funds determined available for apportionment pursuant to time limits on apportionments procedures prescribed in Section 1859.216 or audit procedures prescribed in Section 1859.218, the Board shall accept additional applications for apportionment of the remaining available funds for a period of 135 calendar days from the date the Board made the determination that the remaining funds are available. If additional funds are appropriated by the Federal Government, the Board shall accept applications for a period of 60 days after the funding is made available for apportionment.

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Section 321, Public Law 106-554.

Article 3. Permissible and Impermissible Uses of FRP Grants

Section 1859.208. Permissible Repair and Renovation.

The LEA is limited to the following repair and renovation and work in its application:

- (a) For public and charter schools, the emergency repairs or renovation to public school facilities within the boundaries of the LEA and any qualifying charter school to ensure the health and safety of students and staff, including:
 - (1) Repairs, replacing, or installing roofs, electrical wiring, plumbing systems, or sewage systems.
 - (2) Repairing, replacing, or installing heating, ventilation, or air conditioning systems (including insulation).
 - (3) Bringing public schools into compliance with current fire and safety codes.
 - (4) School facility modifications necessary to comply with the Rehabilitation Act.
 - (5) School facility modifications necessary to comply with the ADA.
 - (6) Asbestos abatement or removal.
- (b) For charter schools, in addition to repair and renovation work identified in subsection (a) above, the acquisition needs related to the building infrastructure for lease or purchase of a building, or building and land, only to the extent that it would supplement the amount of funds available from non-federal funds for these purposes. The building size is limited to no more than 75 square feet for each charter school pupil in grades kindergarten through eighth grade and no more than 90 square feet for each charter school pupil in grades 9-12 that will be housed in the facility acquired. The site size is limited to the acreage allowed in the California Department of Education Guide to School Site Analysis and Development 2000 Edition guidelines.
- (c) For non-profit private schools, repair and renovation work is limited to any of the following:
 - (1) School facility modifications necessary to comply with the Rehabilitation Act.
 - (2) School facility modifications necessary to comply with the ADA.
 - (3) School facility asbestos abatement or removal.
- (d) For Impacted LEA's, new facility construction.

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Section 321, Public Law 106-554.

Section 1859.209. Permissible Project Costs.

The LEA will not be subject to any restrictions on construction allowances, design fees, construction management fees, tests, inspections or any other construction related activity; however, the use of FRP grant funds must comply with the federal Office of Management and Budget Circular A-87, dated August 29, 1997.

The FRP grant may be used for LEA administrative costs deemed necessary by the LEA for the proper and efficient performance and administration of the FRP grant application, not to exceed five percent of the grant award.

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Section 321, Public Law 106-554. Office of Management and Budget Circular A-87 (dated August 27, 1997).

Section 1859.210. Impermissible Project Costs.

A FRP grant may not be used for any of the following:

- (a) Maintenance costs.
- (b) Construction of new facilities, except for Impacted LEA's.
- (c) Stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public.
- (d) Payment of debt service for any outstanding debt.
- (e) Land acquisition, unless an existing building is on the land or a relocatable building is placed on the land within 90 days of the close of escrow, for a charter school.
- (f) Renovation and/or repair work where the LEA received funding for the same work under any state funded school facility program.

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Section 321, Public Law 106-554.

Section 1859.211. Reimbursement.

FRP grants may be used to reimburse the LEA for permissible costs, as defined in Sections 1859.208 and 1859.209, expended or committed by the LEA prior to the apportionment of the application by the Board if:

- (a) The expenditure or commitment was for the planning and/or design of the renovation and/or repair project.
- (b) The expenditure or commitment for other than planning and/or design costs of the renovation and/or repair project was made after the adoption of these regulations by the Board.

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Section 321, Public Law 106-554.

Article 4. Funding Availability

Section 1859.212. Distribution of Funds.

- (a) All funds made available for the FRP shall be distributed and made available for apportionment to certain LEA's in accordance with Section 321(b)(2)(B) of Public Law 106-554. The funding categories and the LEA's eligible to receive FRP grants in each of these categories are as follows:
 - (1) Category A. High Poverty LEA's.
 - (2) Category B. Rural LEA's that did not receive FRP grants under Category A.
 - (3) Category C. All other LEA's including LEA's that did not receive FRP grants under categories A or B.
- (b) LEA's may only receive FRP grants from one of the funding categories noted above.
- (c) The Board may transfer an amount not to exceed the difference of \$7 million and the funds distributed to Category B pursuant to Subsection (a), from Category C to Category B.
- (d) In addition to the amount available for transfer pursuant to Subsection (c), the Board shall transfer funds from Category C to Categories A or B as necessary to fully apportion an LEA's application that could be partially apportioned in that Category because the application had the highest number of points without being fully apportioned.

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Section 321, Public Law 106-554.

Section 1859.213. Amount of the FRP Grant.

The maximum FRP grant for an LEA is limited to the lesser of (a) or (b) below:

- (a) The amount requested in the *Application for Federal Grant*, Form SAB 60-01(New 01-02) submitted by the LEA.
- (b) \$75,000 plus \$20 for each pupil identified in (1), (2), (3) and (4) below that attend a classroom for at least 50 percent of the school day. Do not include adult education pupils; pupils attending home school programs or pupils attending schools via the Internet.
 - (1) With the exception of special day class and community school pupils, pupils enrolled in the LEA as reported in the latest CBEDS report.
 - (2) Special day class and community school pupils reported to the California Department of Education in April prior to the latest CBEDS report.
 - (3) Pupils enrolled in a qualifying charter school(s) that requested funds as part of the LEA's application if the enrollment of the charter school(s) is not already included in the enrollment reports identified in (1) and (2) above.
 - (4) Pupils enrolled in a qualifying non-profit private school(s) that requested funds as part of the LEA's application. Non-profit private school pupil enrollment shall be the enrollment reported in the affidavit or statement filed with the Superintendent of Public Instruction as required by Education Code Section 33190.

The FRP grant amounts shown shall be deemed the full and final apportionment for the application. Any costs incurred by the LEA beyond the FRP grant shall be the responsibility of the LEA.

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Section 321, Public Law 106-554. Section 33190, Education Code.

Article 5. Apportionment of Funds

Section 1859.214. Apportionment of Funds.

The OPSC shall report to the Board, after the date applications have been accepted as prescribed in Section 1859.207, the dollar amount of applications for FRP grants that have been received for each funding category prescribed in Section 1859.212. The Board shall approve and apportion FRP grants to the applications accepted from each of the funding categories based on the following:

- (a) If the total dollar amount of applications accepted for a specific category are less than the funds distributed to that category pursuant to Section 1859.212, the Board shall approve and apportion FRP grants to all the applications accepted for that category. The excess funds shall remain in the respective category and shall be available for additional applications accepted by a subsequent date as prescribed in Section 1859.207.
- (b) If the total dollar amount of the applications accepted for a specific category is more than the funds distributed to that category pursuant to Section 1859.212, the Board shall approve and apportion FRP grants to applications accepted for that category, in descending order, commencing with the application having the highest number of priority points for the LEA determined by all the following:
 - (1) The greater of (A) or (B) below:
 - (A) One point for each percent of pupils in the LEA defined as Poor Children. Round up.
 - (B) One point for every 330 pupils in the LEA defined as Poor Children, not to exceed 50 points. Round up.
 - (2) With the exception of CSS, one point for each percent of current outstanding bonded indebtedness of the LEA that was incurred for capital facility purposes in comparison to the maximum outstanding bonded capacity of the LEA, not to exceed 100 points. Round up. Outstanding bonded indebtedness includes that part of local general obligation bonds, Mello-Roos Bonds, School Facilities Improvement District Bonds and certificates of participation for which the LEA is paying a debt service for capital facility purposes at the time the application is submitted to the OPSC.
 - (3) If the LEA is a CSS, 25 points if the CSS is paying a debt service on a certificate of participation that was issued for capital facility purposes.
 - (4) If the application includes renovation and repair work for a charter school, one point for each percent of the FRP grant that will be used by the LEA for the charter school(s), not to exceed 50 points. Round up.
 - (5) 20 points for each year in the past five years that the LEA contributed at least 95 percent of its deferred maintenance match necessary to receive the maximum State funding authorized under the Deferred Maintenance Program pursuant to Education Code Section 17584
 - (6) 25 points if the LEA is not a High Poverty LEA.

If a portion of an application(s) could be partially apportioned in Categories A or B as prescribed in Section 1859.212 because the application(s) have the highest number of points without being apportioned, the Board shall transfer funds from Category C as prescribed in Section 1859.212 to either Category A or B as necessary to fully apportion the application(s).

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Section 321, Public Law 106-554. Section 17584, Education Code.

Article 6. Miscellaneous

Section 1859.215. Release of FRP Grants to the LEA.

The FRP grant will be released (i.e. warrant issued) to the LEA after submittal by the LEA of the *Fund Release Authorization*, Form SAB 60-02 (New 01/02), which is incorporated by reference, to the OPSC. The FRP grant will be released to the LEA as follows:

- (a) The first 50 percent of the FRP grant after the LEA meets all the following criteria:
 - (1) The final plans for the project(s) to be constructed with the FRP grant are complete and approved by the Division of the State Architect, if required.

- (2) The final plans and site acquisition (if applicable) for those projects(s) have been approved by the CDE, if required.
- (3) The LEA has expended at least 50 percent of the FRP grant amount on the FRP project.
- (b) The second 50 percent of the FRP grant will be released after the LEA has expended an amount equal to at least 100 percent of the FRP grant on the FRP project.

Once funds are released to the LEA, the LEA shall deposit the FRP funds into a separate fund to assure accountability of expenditures.

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Section 321, Public Law 106-554.

Section 1859.216. Time Limit for FRP Grant Apportionments.

Unless the Board makes a finding that the LEA has presented other evidence of circumstances that are beyond the control of the LEA which precludes progress or completion of the project(s) to be constructed with the FRP grant, the FRP grant shall be reduced to permissible costs, as defined in Sections 1859.208 and 1859.209, incurred by the LEA if any of the following occur:

- (a) The LEA does not meet the criteria for release of at least 50 percent of the FRP grant prescribed in subsection (a) of Section 1859.215 within one year from the date the FRP grant was apportioned by the Board.
- (b) The LEA does not meet the criteria for release of 100 percent of the FRP grant within 180 calendar days from the date of the first fund release was issued by the Board pursuant to Subsection (a) of Section 1859.215.

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Section 321, Public Law 106-554.

Section 1859.217. Program Reporting Requirements.

An LEA receiving FRP grants shall submit the *Expenditure Report*, Form SAB 60-03 (New 01/02), which is incorporated by reference, within 270 calendar days of the first release of funds authorized by Section 1859.215. Local funds contributed to the FRP projects shall be reported on the *Expenditure Report*, Form SAB 60-03 (New 01/02). Failure to submit the *Expenditure Report*, Form SAB 60-03 (New 01/02) within the prescribed time period may result in the FRP grant being rescinded by the Board or reduced to permissible costs incurred, as defined in Sections 1859.208 and 1859.209.

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Section 321, Public Law 106-554.

Section 1859.218. Application Expenditures and Audit.

The FRP applications will be audited to ensure that the expenditures incurred by the LEA were made in accordance with the provisions prescribed in Sections 1859.208, 1859.209, 1859.210 and 1859.211. When the OPSC receives the *Expenditure Report*, Form SAB 60-03 (New 01/02), it must notify the LEA within 30 calendar days from the date of receipt of the report that an audit of those expenditures will be made by the OPSC. If the LEA is not notified by the OPSC within 30 calendar days of receipt of the report that an audit will be made, there will be no audit of the application by the OPSC and the expenditures reported by the LEA shall be deemed appropriate. If the LEA has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within 150 calendar days of the notification, unless additional information requested from the LEA has not been received.

The LEA shall be required to maintain all records that support all LEA certifications and expenditures for all costs associated with the FRP application for a period of not less than four years from the date the *Expenditure Report*, Form SAB 60-03 (New 01/02) is submitted to the OPSC.

Should the OPSC conduct an audit of the LEA expenditures for the application and make a finding that some or all of the expenditures were not made in accordance with the provisions of Sections 1859.208, 1859.209, 1859.210 and 1859.211, the OPSC shall recommend to the Board that the FRP apportionment be adjusted based on the audit

findings. Upon adoption of the audit findings by the Board, the LEA must submit a warrant for any amount identified as being owed within 60 days of the Board's action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Section 321, Public Law 106-554. Section 17076, Education Code.

Section 1859.219. Accrued Interest on FRP Grants.

All interest earned on FRP grant funds that are deposited in the county sub-fund shall be returned to the Board. The Board shall return all interest earned to the federal agency that made the FRP appropriation to the state.

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Section 321, Public Law 106-554.

Section 1859.220. Duplication of Applications.

If the LEA's application for a FRP grant involves proposed work also included in a SFP modernization project currently included on the SFP Modernization Unfunded List or the OPSC Modernization Workload List, the LEA must certify that, after eliminating the work to be funded with the FRP grant from the SFP modernization project, the cost estimate for the remaining work in the modernization project is at least 60 percent of the total SFP grant amount provided by the state and the LEA's matching share. The cost estimate may not include planning, tests, inspection or furniture or equipment. If the LEA cannot make this certification, the SFP modernization project must be withdrawn prior to the release of any FRP grants to the LEA.

If the LEA's application for a FRP grant involves proposed work also included in a Deferred Maintenance Program (DMP) critical hardship project authorized by Education Code Section 17587 currently included on the DMP Critical Hardship Unfunded List or the OPSC Deferred Maintenance Critical Hardship Workload List, the critical hardship project must be withdrawn prior to the release of any FRP grants to the LEA.

If the LEA's application for a FRP grant involves work currently included on the LEA's Deferred Maintenance Five-Year Plan pursuant to Education Code Section 17591, the LEA must remove the projects that will be funded with the FRP grants from the Five-Year Plan prior to the release of any FRP grants to the LEA.

Note: Authority cited: Sections 15502 and 15503, Government Code. Section 12300, Education Code.

Reference: Section 321, Public Law 106-554. Sections 17585 and 17591, Education Code.